



4310-JB

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Part 8360

[LLCOF02000 L12200000.DU0000 16X]

Notice of Proposed Supplementary Rules for Public Lands in Colorado: Cache Creek Placer Area

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Proposed Supplementary Rules.

SUMMARY: The Bureau of Land Management (BLM) in Colorado is proposing supplementary rules for 2,160 acres of public lands addressed in the Cache Creek Placer Area Management Plan, approved on February 23, 2016. These proposed supplementary rules would apply to public lands administered by the BLM Royal Gorge Field Office in Chaffee County, Colorado. The proposed rules would implement decisions found in the Cache Creek Placer Area Management Plan relating to the collection of mineral materials within the Cache Creek parcel.

DATES: Please send comments to the address below by [INSERT DATE 60 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER]. Comments received or postmarked after this date may not be considered in the development of the final supplementary rules.

ADDRESSES: You may send comments by the following methods: mail or hand deliver to Kalem Lenard, Outdoor Recreation Planner, BLM Royal Gorge Field Office, 3028 E.

Main Street, Cañon City, CO 81212. You may also send comments via e-mail to rgfo_comments@blm.gov (include “Proposed Supplementary Rules” in the subject line).

FOR FURTHER INFORMATION CONTACT: Kalem Lenard, Outdoor Recreation Planner, at the above address, by phone at 719-269-8538, or by email at klenard@blm.gov. Persons who use a telecommunications device for the deaf may call the Federal Relay Service at 800-877-8339 to contact the above individual during normal business hours. The Service is available 24 hours a day, seven days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION:

I. Public Comment Procedures

Written comments on the proposed supplementary rules should be specific, confined to issues pertinent to the proposed supplementary rules, and should explain the reason for any recommended change. Where possible, comments should reference the specific section or paragraph of the rules that the comment is addressing. The BLM is not obligated to consider or include in the Administrative Record for the final rules comments that the BLM receives after the close of the comment period (see **DATES**), unless they are postmarked or electronically dated before the deadline, or comments delivered to an address other than one of the addresses listed above (see **ADDRESSES**). Comments, including names, street addresses and other contact information of respondents, will be available for public review at the BLM Royal Gorge Field Office, at the address above. Before including your address, phone number, e-mail address or other personal identifying information in your comment, you should be aware that your entire

comment – including your personal identifying information – may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

II. Background

Cache Creek Placer Area is located immediately west and south of the town of Granite, Colorado, and includes Cache Creek, which flows into the Arkansas River. It was the site of one of the first large mining communities in Colorado during the late 1800s. In January 2000, the BLM acquired 2,160 acres through which Cache Creek flows, extending from the San Isabel National Forest boundary to Highway 24. The BLM acquired the parcel through a grant from the Land and Water Conservation Fund, a Federal program that conserves irreplaceable lands and improves outdoor recreation opportunities throughout the nation. The BLM purchased it to help protect crucial elk and riparian habitat as well as to provide recreational opportunities. Recreational mineral collection is one of the activities occurring in the area. Collection methods include gold panning and hand sluicing. The 2,160-acre parcel is not open to the General Mining Law of 1872. The rising price of gold has increased the interest in mineral collection, therefore increasing use at Cache Creek. Due to the high volume of soil that recreational mineral collectors are processing, excessive levels of sediment have collected at the Cache Creek stream, impacting a recovering fishery. The increase in use has also led to user conflicts and human safety hazards, such as unstable holes and large trees. Conflicts with off-leash dogs disturbing other visitors as well as pet waste left in the wetland area are also a common occurrence.

The Cache Creek parcel is not open to the General Mining Law. The parcel is regulated under 43 CFR 8365.1-5, which confines mineral extraction to only “recreational” mineral specimen collection. These regulations do not allow motorized or mechanical devices to aid in mineral specimen collection.

In 2012, the BLM began the public input process for a management plan for the 2,160-acre Cache Creek parcel to manage the increasing impacts and conflicts related to increased recreational use. The management strategy allows hobby recreational placer activities to continue, while mitigating impacts to resources. The public process included presentations and site tours with the Front Range Resource Advisory Council and collaboration with stakeholders and user groups. On March 3, 2014, the BLM held a 30-day public scoping period requesting public input. Based on feedback received during this process, the BLM developed a proposed action and draft Environmental Assessment (EA), which was released for a 30-day public review on December 5, 2014. The BLM incorporated comments into the Final EA and corresponding Decision Record signed on February 23, 2016.

The decision designated the Cache Creek parcel as a Special Area, defined as an area where the BLM “determines that the resources require special management and control measures for their protection” under 43 CFR 2932.5. The decision also provides that a Special Recreation Permit (SRP) will be required for recreational placer activities only. In addition, the decision requires a fee to obtain a permit from Memorial Day weekend to November 30.

III. Discussion of Proposed Supplementary Rules

The proposed supplementary rules would implement the Cache Creek Placer Area Management Plan as follows:

In accordance with 43 CFR subpart 2932, an SRP would be required for recreational mineral collection activities related to placer mining activities. As authorized by 43 CFR 2932.31(d), persons 16 years of age and older would be required to pay a fee of \$5 per day or \$25 annually. Digging within the Cache Creek parcel would be limited to a designated area. The SRP would allow in-situ gold panning (but not digging) in the Cache Creek stream throughout the parcel and outside of the designated area. Dogs and other animals would be required to be on leashes within the designated area. Additional terms and conditions can be found in DOI-BLM-CO-200-2012-0038 DN.

The planning area consists of approximately 2,160 acres of public lands within Chaffee County, Colorado, in the following described townships:

Colorado, Sixth Principal Meridian

T. 12 S., R. 80 W., Sections 1 and 2.

T. 11 S., R. 80 W., Sections 34-36.

T. 12 S., R. 79 W., Section 6.

T. 11 S., R. 79 W., Section 31.

The BLM has determined that these proposed supplementary rules are necessary to enhance public safety, protect natural and cultural resources, and reduce conflicts among public land users.

IV. Procedural Matters

Executive Order 12866, Regulatory Planning and Review

The proposed supplementary rules are not a significant regulatory action and are not subject to review by the Office of Management and Budget under Executive Order 12866. The proposed supplementary rules would not have an effect of \$100 million or more on the economy and would not adversely affect in a material way productivity; competition; jobs; the environment; public health or safety; or State, local or tribal governments or communities. The proposed supplementary rules would not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency. The proposed supplementary rules do not materially alter the budgetary effects of entitlements; grants; user fees or loan programs; or the rights or obligations of their recipients; nor do they raise novel legal or policy issues. These proposed supplementary rules would merely impose limitations on certain recreational activities on certain public lands to protect natural resources and human health and safety.

National Environmental Policy Act

These proposed supplementary rules implement key decisions in the Cache Creek Placer Area Management Plan. During the National Environmental Policy Act (NEPA) review for the Management Plan, the BLM fully analyzed the substance of these proposed supplementary rules in an EA (DOI-BLM-CO-200-2012-0069 EA). The BLM signed the Decision Record for the EA on February 23, 2016, and found the proposed supplementary rules implementing the plan decisions would not constitute a major Federal action significantly affecting the quality of the human environment under section 102(2)(C) of NEPA, 42 U.S.C. 4332(2)(C). A detailed statement under NEPA is not required. The Cache Creek Placer Area Management Plan EA, Finding of No Significant

Impact, and Decision Record are on file in the BLM Royal Gorge Field Office at the address specified in the **ADDRESSES** section.

Regulatory Flexibility Act

Congress enacted the Regulatory Flexibility Act of 1980 (RFA), as amended, 5 U.S.C. 601-612, to ensure that government regulations do not unnecessarily or disproportionately burden small entities. The RFA requires a regulatory flexibility analysis if a rule would have a significant economic impact, either detrimental or beneficial, on a substantial number of small entities. The proposed supplementary rules would have no effect on business entities of any size. The proposed supplementary rules would merely impose reasonable restrictions on certain recreational activities on certain public lands to protect natural resources and the environment and human health and safety. Therefore, the BLM certifies under the RFA that these proposed supplementary rules would not have a significant economic impact on a substantial number of small entities.

Small Business Regulatory Enforcement Fairness Act

These proposed supplementary rules are not a "major rule" as defined at 5 U.S.C. 804(2). These proposed supplementary rules would merely impose reasonable restrictions on certain recreational activities on certain public lands to protect natural resources, the environment and human health and safety. These proposed supplementary rules would not:

- (1) Have an annual effect on the economy of \$100 million or more;
- (2) Cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local agencies, or geographic regions; or

(3) Have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets.

Unfunded Mandates Reform Act

The proposed supplementary rules would not impose an unfunded mandate on State, local, or tribal governments or the private sector of more than \$100 million per year; nor would they have a significant or unique effect on State, local, or tribal governments or the private sector. The proposed supplementary rules would merely impose reasonable restrictions on certain recreational activities on certain public lands to protect natural resources, the environment and human health and safety. Therefore, the BLM is not required to prepare a statement containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1531 et seq.).

Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights (Takings)

The proposed supplementary rules do not constitute a government action capable of interfering with constitutionally-protected property rights. The proposed supplementary rules would not address property rights in any form and would not cause the impairment of constitutionally-protected property rights. Therefore, the BLM has determined that these proposed supplementary rules would not cause a “taking” of private property or require further discussion of takings implications under this Executive Order.

Executive Order 13132, Federalism

The proposed supplementary rules would not have a substantial direct effect on the states, on the relationship between the national government and the states, or on the distribution

of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 13132, the BLM has determined that these proposed supplementary rules do not have sufficient Federalism implications to warrant preparation of a Federalism Assessment.

Executive Order 12988, Civil Justice Reform

Under Executive Order 12988, the BLM has determined that these proposed supplementary rules would not unduly burden the judicial system and that they meet the requirements of Sections 3(a) and 3(b) (2) of Executive Order 12988.

Executive Order 13175, Consultation and Coordination with Indian Tribal Governments

In accordance with Executive Order 13175, the BLM has found that these proposed supplementary rules do not include policies that have tribal implications and would have no bearing on trust lands or on lands for which title is held in fee status by Indian tribes or U.S. Government-owned lands managed by the Bureau of Indian Affairs.

Information Quality Act

In developing these proposed supplementary rules, the BLM did not conduct or use a study, experiment, or survey requiring peer review under the Information Quality Act (Section 515 of Public Law 106-554).

Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

These proposed supplementary rules do not comprise a significant energy action. These proposed supplementary rules would not have an adverse effect on energy supply, production or consumption and have no connection with energy policy.

Executive Order 13352, Facilitation of Cooperative Conservation

In accordance with Executive Order 13352, the BLM has determined that the proposed supplementary rules would not impede facilitating cooperative conservation; would take appropriate account of and consider the interests of persons with ownership or other legally recognized interests in land or other natural resources; would properly accommodate local participation in the Federal decision-making process; and would provide that the associated programs, projects and activities are consistent with protecting public health and safety.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act (44 U.S.C. 3501-3521), the Office of Management and Budget (OMB) has reviewed and approved the information collection requirements for special recreation permits. The relevant OMB control number is 1004-0119, which expires December 31, 2016. We may not conduct or sponsor and you are not required to respond to a collection of information unless it displays a currently valid OMB control number.

Proposed Supplementary Rules

Author

The principal author of these proposed supplementary rules is Kalem Lenard, Outdoor Recreation Planner, BLM, Royal Gorge Field Office.

For the reasons stated in the preamble and under the authorities for supplementary rules found at 43 U.S.C. 1740, 43 U.S.C. 315a, and 43 CFR 8365.1-6, the BLM Colorado State Director proposes supplementary rules for public lands within the BLM Royal Gorge Field Office to read as follows:

SUPPLEMENTARY RULES FOR THE CACHE CREEK PLACER AREA

MANAGEMENT PLAN

Definitions

Cache Creek parcel is defined as the 2,160-acre parcel of public land in Chaffee County, Colorado within the 6th Principal Meridian T. 12 S., R. 80 W. Sections 1 and 2; T. 11 S., R. 80 W. Sections 34-36; T. 12 S., R. 79 W. Section 6; and T. 11 S., R. 79 W. Section 31.

Cache Creek Placer Area is defined as the area directly south and adjacent to the BLM Cache Creek parking area and shown on maps provided by the BLM along with on the ground signing, where possible.

Prohibited Acts

Unless otherwise authorized, the following acts are prohibited on all public lands, roads, trails and waterways administered by the BLM within the Cache Creek parcel:

1. No persons may collect minerals by any means within the Cache Creek parcel without a Special Recreation Permit (SRP).
2. Persons 16 years of age and over must pay a fee of \$5 per day or \$25 annually to obtain an SRP.
3. You must not violate terms and conditions of the SRP.
4. You must not bring an animal into the Cache Creek Placer Area between Memorial Day Weekend and November 30 unless the animal is on a leash not longer than 6 feet and secured to a fixed object or under control of a person, or is otherwise physically restricted at all times.

Exceptions

The following persons are exempt from these supplementary rules: Any Federal, State, local government officer or employee acting within the scope of their duties; members of any organized law enforcement, rescue, or firefighting force in performance of an official duty; and any persons, agencies, municipalities or companies whose activities are authorized in writing by the BLM.

Enforcement

Any person who violates any of these supplementary rules may be tried before a United States Magistrate and fined in accordance with 18 U.S.C. 3571, imprisoned no more than 12 months under 43 U.S.C. 1733(a) and 43 CFR 8360.0-7, or both. In accordance with 43 CFR 8365.1-7, State or local officials may also impose penalties for violations of Colorado law.

Ruth Welch
Bureau of Land Management
Colorado State Director

[FR Doc. 2016-24610 Filed: 10/13/2016 8:45 am; Publication Date: 10/14/2016]